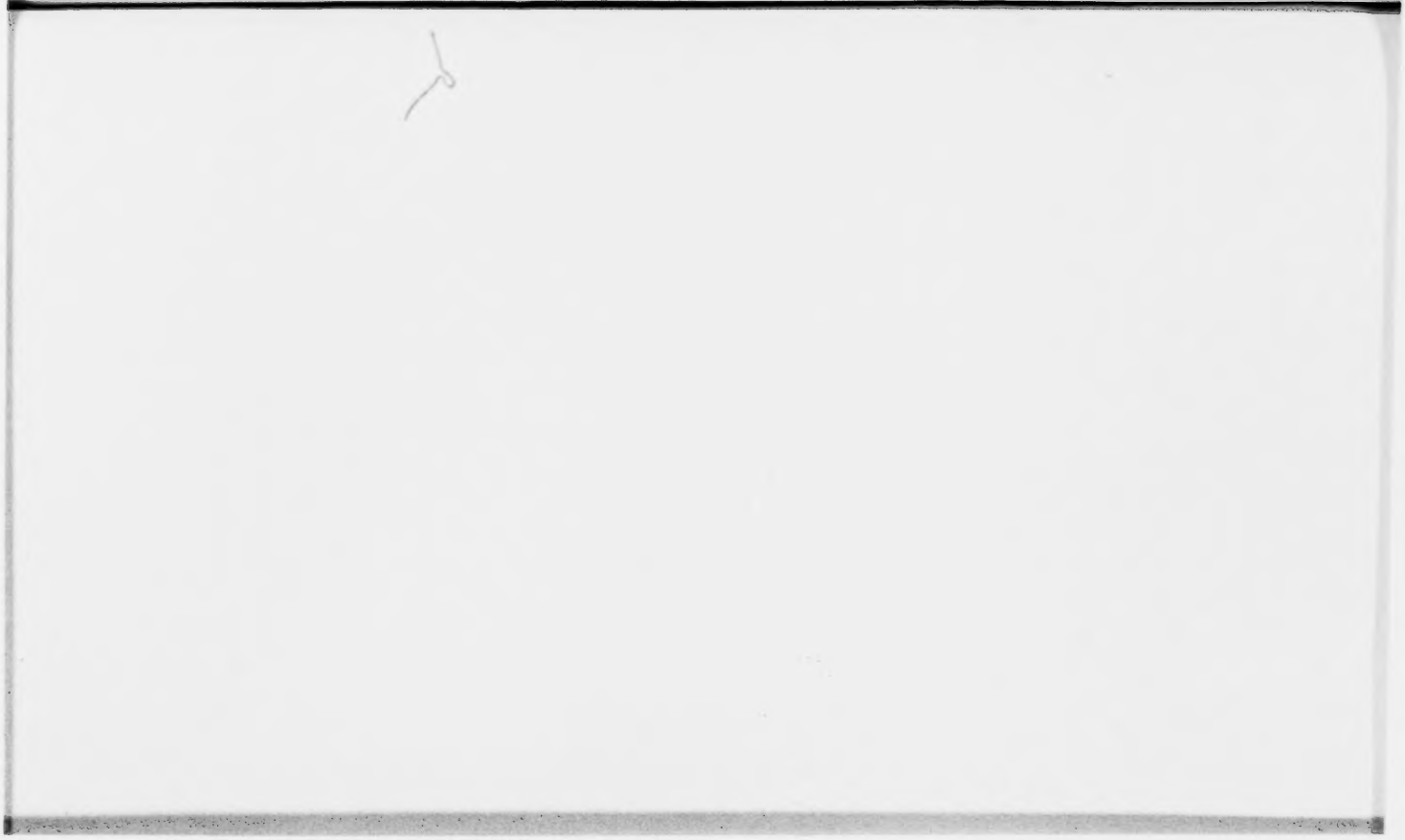

No.————

IN THE

Supreme Court of the United States

October Term, 1944

WOODROW WILSON TILGHMAN, *Petitioner*

VERSUS

UNITED STATES OF AMERICA, *Respondent*

SUPPORTING BRIEF

To the Honorable The Supreme Court of the United States:

In support of his petition for writ of certiorari, petitioner respectfully shows to this Honorable Court:

1.

OPINIONS OF THE COURTS BELOW

There was no opinion of the trial court, but the opinion of the United States Circuit Court of Appeals, for the Fifth Circuit, was handed down on the 18th day of De-

cember, 1944, and appears as Appendix A hereto attached. Petition for rehearing was overruled January 22, 1945, without written opinion.

JURISDICTION OF THE COURT

This court has jurisdiction of this cause under Title 28, U. S. C. A., Section 347-a, and under subsection 3 of paragraph 5 (b) of Rule 38 of the Court Rules of the Supreme Court of the United States, in that the Circuit Court of Appeals decided an important question in conflict with the well-established rule of decisions of this Honorable Court, and particularly in conflict with:

Mortenson v. United States, 64 Sup. Ct. 1038, 88 Law Ed. .....;

United States v. Reginell, 133 Fed. (2d) 595 (certiorari denied 63 Sup. Ct. 856, 318 U. S. 783, 87 Law Ed. 1150; rehearing denied 63 Sup. Ct. 1037, 319 U. S. 780, 87 Law Ed. 1725);

Shama v. United States, 94 Fed. (2d) 1 (certiorari denied 58 Sup. Ct. 1037, 304 U. S. 568; 82 Law Ed. 1533);

United States v. Hunt, 12 Fed. (2d) 592 (certiorari denied 62 Sup. Ct. 97, 314 U. S. 625, 86 Law Ed. 502);

Pine v. United States, 135 Fed. (2d) 353 (certiorari denied 64 Sup. Ct. 40, 320 U. S. 740, 88 Law Ed. .....).

The jurisdiction of this court is invoked upon the following grounds: There was no substantial evidence to support a conviction of petitioner on count 2 of the indictment, and the trial court erred in failing and refusing to instruct a verdict of not guilty duly and seasonably made at the close of the Government's case and renewed when both sides had closed; and the sentence imposed by the court on conviction of the second count is erroneous in that there is no substantial evidence adduced upon the trial of the cause sufficient to support such finding of guilt, and the United States Circuit Court of Appeals erred in not reversing and remanding same for that reason.

STATEMENT OF THE CASE

On May 8, 1944, an indictment in two counts was returned against petitioner to the District Court of the United States for the Northern District of Texas, charging him with what is commonly known as the Mann White Slave Act, Section 398 of Title 18 of the United States Code Annotated. The indictment charged that he transported Bernice Louise Williams from Oklahoma City, Oklahoma, to the City of Dallas, Texas, for immoral purposes, to-wit, prostitution, on January 10, 1944, in the first count. The second count charges the transportation of the said Bernice Louise Williams from Oklahoma City, Oklahoma, to Dallas, Texas, on or about February 19, 1944, for the same purpose (Tr. 1 and 2).

On May 11, 1944, the cause went to trial before a jury, and at the conclusion of the Government's case petitioner moved the court for an instructed verdict of not guilty, which was overruled (Tr. 93).

Thereupon, and on May 12, 1944, the court submitted both counts of the indictment to the jury (charge of the court, Tr. 165-170). The jury returned into court the following verdict:

> "We, the jury, find the defendant, Woodrow Wilson Tilghman not guilty on the first court. Guilty on the second count."

The court thereupon rendered judgment on said verdict, sentencing petitioner to imprisonment for a term of five years (Tr. 5). Petitioner seasonably filed his notice of appeal to the United States Circuit Court of Appeals for the Fifth Circuit, in which notice he set forth the grounds on which the appeal was predicated, one of which is the error of the court in refusing to instruct the jury to return a verdict of not guilty (Tr. 13, 14 and 15). The petitioner perfected his appeal, and on the 18th day of December, 1944, the United States Circuit Court of Appeals in all things affirmed the action of the court below (Appendix A).

Thereupon, and in time allowed, he filed his petition for rehearing, which was overruled without written opinion on January 22, 1945.

SPECIFICATION OF ERROR

First Specification of Error

The court erred in overruling petitioner's motion for an instructed verdict of not guilty herein on account of the insufficiency of the evidence to sustain a conviction.

Second Specification of Error

The court erred in passing sentence upon this petitioner under the Second Count in the indictment, because the testimony adduced upon the trial was not sufficient to support the verdict of the jury under said count nor said sentence thereunder.

BRIEF OF ARGUMENT

By the verdict of the jury and the judgment of the court based thereon this petitioner was found and adjudged to be not guilty of the charge in the first count in the indictment. He was fully acquitted and vindicated of that charge. The case now rests wholly upon the record as it pertains to the charge in the second count, that is, to the alleged transportation occurring on or about the 19th day of February, 1944.

The petitioner and said Bernice Louise Williams were then married to each other, having married by a common-law marriage in Dallas, Texas, prior to their return to Oklahoma City in November, 1943. A common-law mar-

riage is valid in Texas. See: Texas Jurisprudence, Volume 28, pages 714 to 718, and footnote 14 on page 717; Grigsby v. Reib, 153 S. W. 1124.

They were thus married and lived together as man and wife in Oklahoma City under the common-law marriage from November, 1943, to the time they came to Dallas, Texas, in February, 1944, as charged in the second count. A common-law marriage is valid in Oklahoma. Reaves v. Reaves, 82 Pacific Reporter 490; Draughn v. State, 158 Pacific Reporter 890.

In construing the statute under which this prosecution was had and conviction obtained our Federal Courts hold that:

> "If the interstate journey was planned and made with no criminal purpose, at the time, no crime was committed, no matter what may have occurred thereafter." And "The burden is on the Government to prove the existence of such criminal purpose at the time of the journey." Mortenson vs. U. S. supra.
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> *Sloan v. United States*, 287 Fed. 91;
>
> *Drossas v. United States*, 16 Fed. (2d) 833;
>
> *Van Pelt v. United States*, 240 Fed. 346;
>
> *Hunter v. United States*, 45 Fed. (2d) 55;
>
> *Corbett v. United States*, 299 Fed. 27.

The petitioner testified in his own behalf and testified that the only purpose of their coming back to Texas in

February, 1944, was to work for some roofing concern and that the idea of her practicing prostitution was not involved; that that was by no means their, or his, purpose (Tr. p. 110).

Aside from the petitioner's testimony the record discloses that upon their arrival in Dallas on that journey on February 17th they registered at the Bryan Hotel, and from there they went to the Baylor Hotel where they lived until the time of their arrest. Later they registered at the Carlysle Hotel (Tr. 62 and 64). These, as far as the record discloses, were respectable hotels in Dallas. There was no testimony of any misconduct by either at either of said places.

The only testimony reflected by this record as to any connection of the petitioner with any prostitution in Dallas after the second trip was given by the witnesses Bonnie Marshal, Ruth Jones and the two Federal Bureau of Investigation men, John T. Ludey and Ed Jones. The only testimony given by Ruth Jones was that she had engaged in prostitution at the Melba Hotel about two and a half months. That she knew Nancy Barton, or Bernice Williams. That she hustled down at the Melba Hotel while the witness was there. That she had met the petitioner. That she first met him on the street, Elm and Akard, Nancy Barton introduced me; I just ran into them and she introduced him as her husband. The next time she

saw them was when she went to the house to visit them, out at the Baylor Hotel. She had never seen him at the Melba Hotel (Tr. 73 and 74). It will be observed she does not give the date she hustled at the Melba Hotel, nor when Nancy Barton hustled there—whether it was in 1944 or 1943.

The witness Bonnie Marshall testified that petitioner came back to Dallas in February, 1944. That she received a wire signed by Nancy. After receiving that wire they came to the witness' place (Melba Hotel). He came up, I think it was either Monday or Tuesday, they came up, and he wanted to know if she could go to work. Witness told him that everything was hot and witness didn't know how long they could work, so then she went to work the following night, and that she hustled that time three weeks (Tr. 85 and 86). There was nothing to indicate how long that was after the parties had come from Oklahoma City to Dallas the second time; nor what petitioner meant when he "wanted to know if she could go to work". What kind of work? Did he mean hustling? The record does not disclose.

The only other witnesses whose testimony touches on that feature, petitioner's intention in making the journey in February, 1944, were the F. B. I. agents, John T. Ludey and Ed Jones, in detailing the statements of petitioner to them in their investigation of this case. The testimony of Mr. Ludey as to the second trip is on pages 33 and 34 of the transcript, and that of Mr. Jones is on page 155

of the transcript. Each of said witnesses testified that petitioner said that in a few days after they arrived in Dallas Bernice began hustling at the Melba. There is nothing in their testimony as to when petitioner learned of it, or whether he condoned it, or whether it was in contemplation at the time of the journey charged in the second count.

The petitioner having been definitely acquitted of the offense charged in the first count, as well as the acts following same up until their return to Oklahoma City in November, 1943, he submits that the testimony adduced in this cause under the second count is wholly insufficient to show that prostitution was contemplated by petitioner at the time of the second journey, or that the second journey was prompted by a purpose to practice prostitution on the part of Bernic Williams, and that the Government has failed to meet and discharge the burden upon her to make said proof beyond a reasonable doubt.

We earnestly urge that there is no substantial evidence introduced in the record to support a conviction under the second count of the indictment. This being true, it was the duty of the trial court to instruct a verdict of not guilty at the close of the Government's case upon this count. The fact that the jury acquitted petitioner on the first count and convicted him on the second count does not cure the error. It is equally true that if there is no substantial evidence to support a conviction on the second count, then it was error for the court to impose sentence

thereon. In the very recent case of *Mortenson v. United States*, 64 Sup. Ct. 1038, 87 Law Ed. ....., it was clearly and concisely held by this Honorable Court that before a conviction could stand under this statute the immoral purpose must have been foormed prior to the transportation, and that the transportation must have been done in carrying out the purpose.

We further earnestly urge that under the Mortenson case, supra, the evidence is wholly insufficient both as to purpose of the transportation and the knowledge that petitioner had of the intention of the injured party. Before there can be a conviction on an indictment charging violation of this statute there must be substantial evidence that the transportation of the injured female in interstate commerce was for the purpose of prostitution.

Mortenson v. United States, 64 Sup. Ct. 1038, 88 Law Ed. .....;

United States v. Reginell, 133 Fed. (2d) 595 (certiorari denied 63 Sup. Ct. 856, 318 U. S. 783, 87 Law Ed. 1150; rehearing denied 63 Sup. Ct. 1037, 319 U. S. 780, 87 Law Ed. 1725);

Shama v. United States, 94 Fed. (2d) 1 (certiorari denied 58 Sup. Ct. 1037, 304 U. S. 568, 82 Law Ed. 1533);

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Pine v. United States, 135 Fed. (2d) 353 (certiorari denied 64 Sup. Ct. 40, 320 U. S. 740, 88 Law Ed. .....).

WHEREFORE, petitioner prays that this cause be reversed and remanded, and for such other orders as may be by this Honorable Court deemed just and proper.

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